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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: FRANKFURT, GERMANY Date: APR 25 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having multiple criminal convictions. The applicant married a United States citizen in Germany on February 1, 2001, and she is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside with her spouse in the United States.

The officer in charge (OIC) concluded that the applicant had failed to establish extreme hardship would be imposed upon her United States citizen spouse. The application was denied accordingly.

On appeal, the applicant, through her husband (Mr. [redacted], requests that a waiver be granted so that she and their soon to be born child can accompany Mr. [redacted] on his forthcoming reassignment to the United States. The applicant asserts that she is pregnant and expects to give birth on January 31, 2003. The applicant asserts further that Mr. [redacted] and their soon to be born child will suffer extreme hardship if the waiver application is denied because she will be the primary caretaker of their child and because she is financially dependent on Mr. [redacted] The applicant additionally asserts that she has no legal right to live in Germany and that she is unable to return to her native country, Cuba, because she applied for asylum in Germany in 1998 and was subsequently blacklisted by the Cuban government.

The record reflects that:

On February 1, 1999, the applicant was convicted for the offense of attempting to illegally enter the Federal Territory of Germany;

On October 18, 1999, the applicant was convicted in the Amberg Court, Germany, for the offense of theft;

On June 16, 2000, the applicant was convicted in the Amberg Court, Germany, for the offense of theft in two separate cases that were joined into one indictment;

The applicant was fined for the attempted illegal entry and first theft conviction. She was sentenced to four months imprisonment

and three years probation for the second and third theft convictions.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
> >
> > . . . .
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> (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), [and] (B) . . . of subsection (a)(2) . . . if -
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> . . . .
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> (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .
>
> (2) the Attorney General, in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status . . . .

A review of the record reflects that the OIC erroneously found that the applicant was inadmissible pursuant to section

212(a)(2)(B) of the Act. As indicated above, the alien must have received an aggregate sentence to confinement of 5 or more years in order to be inadmissible under section 212(a)(2)(B) of the Act. In the applicant's case, the aggregate sentence to confinement is less than 5 years. She is thus not inadmissible pursuant to that section of the Act.

Nevertheless, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, as an alien who has been convicted of a crime involving moral turpitude (theft). As indicated above, section 212(a)(2)(A)(i)(I) of the Act also provides for the availability of a section 212(h) waiver of inadmissibility. Thus, despite the OIC error, the applicant has had an opportunity to apply for the section 212(h) waiver. The AAO therefore finds the OIC error to be harmless.

The applicant has failed to establish that Mr. [redacted] or her soon to be born child would suffer extreme hardship if she is not granted a waiver of inadmissibility. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship pursuant to section 212(i) of the Act. The factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant asserts that Mr. [redacted] will suffer extreme hardship if he is separated from his wife and their soon to be born child. The applicant asserts that Mr. [redacted] will suffer additional emotional hardship because she will be the primary caretaker of their child and because she is not able to remain in Germany legally and she cannot return to Cuba. The record indicates, however, that since applying for asylum in 1998, the applicant has returned to visit family in Cuba, and the record contains no evidence to document the assertion that the applicant has been blacklisted in Cuba or that she has no legal rights in her native country. Moreover, it appears that the applicant continues to have a pending asylum application in Germany and presumably she has the right to remain in Germany until the case is adjudicated. Furthermore, although the record contains an unofficial memorandum from an army nurse stating that the applicant is pregnant, no other medical evidence

relating to the pregnancy or birth has been provided. Hardship to such child can thus not be considered. There are no other health issues in this case. The record indicates that Mr. [redacted] has lived in Germany for the past 28 years and that his ex-wife is a German native. However, no other evidence is contained in the record regarding Mr. [redacted] ties in or outside of the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.